

No: 668

APPROVED AND SIGNED BY THE GOVERNOR

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OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



ENROLLED

Committee Substitute for

SENATE BILL NO. 668

(By Mr. Jensen, et al)



PASSED March 12, 1983

In Effect ninety days for Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 668

(MR. TUCKER AND MR. HECK, *original sponsors*)

[Passed March 12, 1983; in effect ninety days from passage.]

AN ACT to repeal section fourteen, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, four, six, eleven, fifteen, twenty-six and twenty-nine of said article, relating to the sale of wines and relating to providing that part III of this article shall apply to suppliers and distributors of wine; definition of supplier; changing the gallonage tax to liter tax; changing point of taxation from distributor to supplier; eliminating reports from those who supply distributors; requiring notice of assessment by certified mail; eliminating section on collection by distraint; providing for collection of taxes; forfeiture of bond by suppliers; and requiring bond of distributors.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, four, six, eleven, fifteen, twenty-six and twenty-nine of said article be amended and reenacted to read as follows:

ARTICLE 8. SALE OF WINES.

PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.

§60-8-1. Construction and application of article.

1 (a) The provisions of part II of this article shall have
2 general application to the distribution and retail sale of
3 wine in this state. The provisions of part III of this article
4 shall relate solely to the distribution and the regulation of
5 suppliers and distributors of such wines as may be
6 permitted to be sold at retail pursuant to the provisions of
7 this article. The provisions of part IV of this article shall
8 relate solely to the retail sale of wine in grocery stores as the
9 term "grocery store" is defined in this article and the retail
10 sale of wine in wine specialty shops as defined in this
11 article. In the event of any inconsistency of any provisions
12 of part II and the provisions of either part III or part IV of
13 this article, the provisions of either part III or part IV shall
14 prevail to the extent of such inconsistency.

15 (b) In the event of any inconsistency between any of the
16 provisions of this article and provisions of any other article
17 of this chapter or of this code, the provisions of this article
18 shall prevail to the extent of any such inconsistency.

19 (c) To the extent the provisions of this chapter exclusive
20 of this article may be given application without creating an
21 inconsistency with the provisions of this article, the
22 provisions of this chapter, exclusive of this article, shall
23 apply to the same extent as if this article did not exist.

PART II. SALE OF WINE GENERALLY.

§60-8-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 "Commissioner" means the West Virginia alcohol
4 beverage control commissioner.

5 "Distributor" means any person whose principal place of
6 business is within the state of West Virginia, and who is
7 engaged in selling or distributing wine to retailers under
8 authority of this article and actually maintains a warehouse
9 in this state for the distribution of wine.

10 "Fortified wine" shall mean any wine to which brandy or
11 other alcohol has been added and shall include dessert
12 wines which are not fortified.

13 "Grocery store" means any retail establishment,

14 commonly known as a grocery store, supermarket or
15 delicatessen, where food, food products and supplies for the
16 table are sold for consumption off the premises with
17 average monthly sales (exclusive of sales of wine) of not less
18 than three thousand dollars and an average monthly
19 inventory (exclusive of inventory of wine) of not less than
20 three thousand dollars. The term "grocery store" shall also
21 include and mean a separate and segregated portion of any
22 other retail store which is dedicated solely to the sale of
23 food, food products and supplies for the table for
24 consumption off the premises with average monthly sales
25 with respect to such separate or segregated portion
26 (exclusive of sales of wine) of not less than three thousand
27 dollars and an average monthly inventory (exclusive of
28 inventory of wine) of not less than three thousand dollars.

29 "Licensee" means the holder of a license granted under
30 the provisions of this article.

31 "Retailer" means any person licensed to sell wine at retail
32 to the public at his established place of business for off-
33 premises consumption and who is licensed to do so under
34 authority of this article.

35 "Supplier" means any manufacturer, producer,
36 processor, distributor or supplier of wine who sells or offers
37 to sell or solicits or negotiates the sale of wine to any
38 licensed West Virginia distributor.

39 "Tax" includes within its meaning interest, additions to
40 tax and penalties.

41 "Taxpayer" means any person liable for any tax, interest,
42 additions to tax or penalty under the provisions of this
43 article and any person claiming a refund of tax.

44 "Varietal wine" means any wine labeled according to the
45 grape variety from which such wine is made.

46 "Vintage wine" or "vintage-dated wine" means wines
47 from which the grapes used to produce such wine are
48 harvested during a particular year or wines produced from
49 the grapes of a particular harvest in a particular region of
50 production.

51 "Wine" means any alcoholic beverage obtained by the
52 natural fermentation of the natural content of grapes, other
53 fruits or honey or other agricultural products containing
54 sugar and to which no alcohol has been added and shall
55 include table wine, and shall exclude fortified wine.

56 "Wine specialty shop" means a retailer who shall deal

57 principally in the sale of table wine, wine accessories and
58 food or foodstuffs normally associated with wine and who
59 shall maintain a representative number of such wines for
60 sale in his inventory which are designated by label as
61 varietal wine, vintage, generic and/or according to region of
62 production and the inventory shall contain not less than
63 fifteen percent vintage or vintage-dated wine by actual
64 bottle count.

§60-8-4. Liter tax.

1 The tax of one dollar per gallon and in like ratio on other
2 volumes heretofore levied and imposed on all wine sold by
3 distributors to retailers is continued through the thirtieth
4 day of April, one thousand nine hundred eighty-three.
5 There is also hereby levied and imposed on all wine in the
6 inventory of distributors at the end of business on the
7 thirtieth day of April, one thousand nine hundred eighty-
8 three, a tax of twenty-six and four hundred six-
9 thousandths cents per liter.

10 Before the sixteenth day of May, one thousand nine
11 hundred eighty-three, every distributor shall make a
12 written report under oath to the commissioner showing the
13 quantity, label and alcoholic content of wine sold or
14 purchased by the distributor during the preceding month,
15 and shall report the quantity of liters in inventory at the end
16 of business on the thirtieth day of April, one thousand nine
17 hundred eighty-three, and at that time shall either fully pay
18 the tax thereon imposed by this article on the wine sold
19 prior to the first day of May, one thousand nine hundred
20 eighty-three, and the wine in inventory at the end of
21 business on the thirtieth day of April, one thousand nine
22 hundred eighty-three, or shall pay such tax in three equal
23 consecutive payments due respectively on the sixteenth day
24 of May, the sixteenth day of June and the sixteenth day of
25 July, one thousand nine hundred eighty-three.

26 There is further hereby levied and imposed on all wine
27 sold after the thirtieth day of April, one thousand nine
28 hundred eighty-three, by suppliers to distributors, except
29 wine sold to the commissioner, a tax of twenty-six and four
30 hundred six-thousandths cents per liter.

31 Before the sixteenth day of June, one thousand nine
32 hundred eighty-three, and the sixteenth day of each month
33 thereafter, every supplier shall make a written report under

34 oath to the commissioner showing the identity of the
35 purchaser, the quantity, label and alcoholic content of wine
36 sold by the supplier to West Virginia distributors during the
37 preceding month, and at the same time shall pay the tax
38 imposed by this article on the wine sold to the distributor
39 during the preceding month.

40 The reports shall contain other information and be in the
41 form the commissioner may require. For purposes of this
42 article, the reports required by this section shall be
43 considered tax returns.

44 No wine imported, sold or distributed in this state shall be
45 subject to more than one gallonage or liter tax.

46 This section is to be effective upon date of passage.

**§60-8-6. License or registration required for sale or shipment
of wine.**

1 Except as to the commissioner, no person may offer for
2 sale or sell wine in this state, or offer wine for shipment into
3 this state, except to a distributor who is duly licensed under
4 this article. Every person, whether resident or nonresident
5 in this state, who is engaged in or desires to engage in the
6 sale or shipment of wine to a distributor for resale under
7 this article shall, prior to engaging in such activities,
8 register with the commissioner. If any such person violates
9 the provisions of this article, he shall not be permitted to
10 sell, ship or deliver any wine to a distributor or to the
11 commissioner, or otherwise engage in the wine business in
12 this state for a period of one year from the date a notice is
13 mailed to such person by the commissioner of the fact that
14 such person has violated the provisions of this article.
15 During such one-year period, it shall be unlawful for any
16 distributor within this state to buy or receive wine from
17 such person or to have any dealings with such person with
18 respect thereto. Hearings and appeals on such notices may
19 be had in the same manner as in the case of revocations of
20 licenses under this article.

§60-8-11. Notice of assessment; petition for reassessment.

1 The commissioner shall give by certified mail to the
2 taxpayer written notice of any assessment made pursuant
3 to this article. Unless the taxpayer to whom a notice of
4 assessment is directed shall, within thirty days after service
5 thereof (twenty days in the case of jeopardy assessments),

6 either personally or by certified mail, file with the
7 commissioner a petition in writing, verified under oath by
8 said taxpayer or his duly authorized agent having
9 knowledge of the facts, setting forth with particularity the
10 items of the assessment objected to, together with the
11 reasons for objections, said assessment shall become final
12 and conclusive, not subject to administrative or judicial
13 review, and the amount thereof shall be payable at the end
14 of the thirty-day period (twenty days in the case of a
15 jeopardy assessment). A petition for reassessment shall be
16 deemed to be timely filed if the postmark date thereon is
17 clearly within said thirty days (twenty days in case of
18 jeopardy assessment) of receipt of said assessment by the
19 taxpayer or is received within such period.

§60-8-15. Collection by action or suit.

1 The commissioner may collect any tax due and unpaid
2 under the provisions of this article either by appropriate
3 legal proceedings in Kanawha County or by actions at law
4 or other appropriate remedy resulting in the forfeiture of
5 bond for failure to pay taxes and fees prescribed by section
6 four of this article.

§60-8-26. Forfeiture of bond.

1 On conviction of a violation of any provision of this
2 article, upon the revocation of a license in accordance with
3 section eighteen of this article or upon finding of failure of a
4 taxpayer to pay all taxes prescribed by section four of this
5 article, which conviction, revocation or finding has become
6 final, the licensee, former licensee or company registered as
7 a supplier, as the case may be, shall forfeit any bond
8 required by section twenty-nine of this article. The penal
9 sum of any bond forfeited shall forthwith be paid to the
10 state treasurer and credited to the general revenue fund of
11 this state. Such sum may be collected by an action at law or
12 other appropriate remedy.

§60-8-29. Bond required of distributors.

1 Each applicant for a distributors license or each company
2 registered as a supplier shall furnish at the time of
3 application a bond with a corporate surety authorized to
4 transact business in this state, payable to the state, and
5 conditioned on the payment of all taxes and fees herein

6 prescribed and on the faithful performance of and
7 compliance with the provisions of this article.

8 The penal sum of the bond for distributors shall be ten
9 thousand dollars, and the penal sum of the bond for
10 suppliers shall be twenty-five thousand dollars.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Samuel P. Cohen
.....
Chairman Senate Committee

Donald Anello
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Todd C. Nichols
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Walter P. McSwain
.....
President of the Senate

Wm. M. See, Jr.
.....
Speaker House of Delegates

The within *is approved* this the *29*
day of *March*, 1883.

..... *John A. Pugh*
Governor



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SECY. OF STATE